IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/08/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.10798 OF 2003
AND
CRL.M.P.No.3685 OF 2003.

C.Palanisamy ... Petitioner

-Vs-

M/s.Cardamom Marketing Corporation
rep.by its Partner
Sri S.Vadamalai Muthu ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.G.Palani

For respondent : Mr.R.Regupathi

:O R D E R

The above Criminal Original Petition has been filed under Section 4 82 of the Code of Criminal Procedure praying to call for the records in C.C.No.330 of 2000 on the file of the Court of District Munsifcum-Judicial Magistrate, Bodinayakkanur and quash the same.

2. On a perusal of the materials placed on records and upon hearing the learned counsel for both, it comes to be known that the respondent herein has filed a complaint before the Court of Judicial Magistrate, Bodinayakkanur in C.C.No.330 of 2000 for the offence punishable under Section 138 of the Negotiable Instruments Act and the same is pending trial before the said Court. At this stage, the petitioner has come forward to file the above criminal original petition praying to quash the said criminal proceeding on ground that the respondent has fabricated all the documents and has filed the false complaint before the Court.

3. The learned counsel for the respondent/complainant would submit that on an earlier occasion, on similar grounds, the petitioner has filed a discharge petition before the trial Court in Crl.M.P.No.142 of 2001 and since the same has been dismissed on 8.2.2001, he has also filed the Criminal Revision Petition No.251 of 2001 before this Court, wherein, this Court, having appreciated all the facts and circumstances of the case in the light of the position of law, has dismissed the said criminal revision

petition, by order dated 10.1.2003 and suppressing the said fact, the petitioner has come forward to file the above criminal original petition and would pray to dismiss the same.

4. In the above facts and circumstances, since all the points which have been raised herein by the petitioner are the subject matter of trial, this Court, sitting on subjective satisfaction on its inherent jurisdiction, cannot appreciate such of the factual questions and invoke its inherent powers. Moreover, it is a matter which has already been decided on a discharge petition filed by the petitioner in Crl.M.P.No.142 of 2001 by the trial Court and thereupon in revision by this Court in Criminal Revision Petition No.251 of 2001.

5. In SAMIDURAI vs. RAJALAKSHMI reported in 1999-1-L.W.(Crl.) 221 it has been held:

"As laid down in 1993 SCC (Cri) 333, it is now well-settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising power which are expressly barred under Sections 397(3) and 399(3) Cr.P.C. Ordinarily, when revision has been barred under Section 397(3) of the Code, a person cannot be allowed to take recourse to the High Court under inherent powers of the High Court under Section 482 Cr.P.C., since it may amount to circumvention of the provisions of Section 397(3) Cr.P.C. When the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed by the Magistrate requires correct, it is but the duty of the High Court to have it corrected or else grave miscarriage of justice would ensue."

6. In RAJENDRAN vs. USHARANAI reported in 2001-1-L.W.(crl.)319, it has been held:

"... the petition under Section 482 Cr.P.C. is not maintainable against the order passed in revision by the Sessions Court as it amounts to second revision."

Therefore, within the meaning of Sections 397(3) and 399(3) Cr.P.C., this is nothing but a second revision, which is discredited and for all the above discussions held, the above criminal original petition would become liable only to be dismissed.

In result,

(i)the above criminal original petition is without merit and the same is dismissed.

(ii)However, taking into consideration the fact that the matter is pending from the year 2000, the Court of Judicial Magistrate, Bodinayakanur is hereby directed to conduct a thorough trial in C.C.No.330 of 2000 and deliver the judgment on merits and in accordance with law within three months from the date of receipt of a copy of this order.

(iii)Further, taking into consideration the difficulties expressed on the part of the petitioner in appearing before the trial Court on every occasion when the matter gets posted, his personal appearance before the Court below is dispensed with excepting on occasions such as preliminary questioning, examination of the accused under Section 313 Cr.P.C., at the time of delivery

of judgment etc. during which time, the trial Court is at liberty to seek the presence the petitioner as per the provisions of Section 205 Cr.P.C. The petitioner is permitted to appear before the trial Court through his pleader, as per Section 205 Cr.P.C.

Consequently, Crl.M.P.No.3685 of 2003 is also dismissed.

Index: Yes
Internet: Yes

Rao

To
The Judicial Magistrate,
Bodinayakkanur.